

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**MILTON ROSALES, MILTON
BETANCOURT, WILMER BRITO,
DENNIS ROSALES, ZUNIGA JESUS**

Plaintiffs

V.

**HEB GROCERY COMPANY, LP and
FRIO NEVADA CORPORATION**

Defendants

CIVIL ACTION NO. 4:14-cv-03187

JURY TRIAL DEMANDED

**PLAINTIFFS' ADVISORY TO COURT REGARDING
THEIR MOTION FOR EQUITABLE TOLLING**

Pending before the court is Plaintiff's Motion for Equitable tolling. Pursuant to the Court's request for additional authority in support of and against the motion, Plaintiff files the following:

1. In support of their motion, Plaintiffs submit *Elliot v. Group Medical & Surgical Service*, 714 F. 2d 556 (5th Cir. 1983). There, the Court held that if an employer didn't post ADEA notices, the time limit on filing notices to sue didn't start running until the plaintiffs had actual knowledge of their rights. The posting requirements for the ADEA (29 CFR § 1627.10) and FLSA (29 CFR § 516.4) are similar. Therefore, if Frio didn't post FLSA notices, then the SOL should not start running until plaintiffs learned of their rights or hired counsel. Plaintiffs also provide an affidavit from Jesus Zuniga stating that Defendant did not post the required FLSA notice.
2. In opposition to their motion, Plaintiffs submit *Meija v. Brothers Petroleum, LLC*, 2014 WL 38553580, CA No. 12-2842 (E.D. Louisiana) (Aug. 4, 2014). In this case, the Court held that equitable tolling is to be applied sparingly and in extraordinary circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was forwarded on March 4, 2016, in the following manner to:

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